

Recording Requested By:

FMC Corporation

When Recorded, Mail To:

RECORDED AT REQUEST OF

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AT 10 O'CLOCK M
CONTRA COSTA COUNTY RECORDS
STEPHEN L. WEIR
COUNTY RECORDER

FEE:

Howard K. Hatayama, Regional Administrator

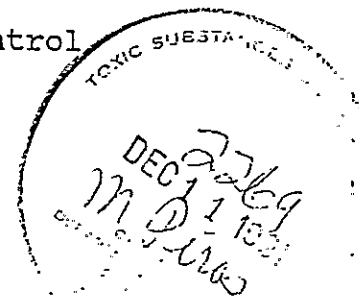
Department of Toxic Substances Control

Region 2

700 Heinz Avenue, Building F

Berkeley, CA 94710

Attn: Site Mitigation Branch



COVENANT

TO RESTRICT USE OF PROPERTY

FMC Corporation - Richmond Site

This Covenant and Agreement ("Covenant") is made on the
28th day of October, 1991 by FMC Corporation
 ("Covenantor"), who is the owner of record of certain property
 situated in Richmond, County of Contra Costa, State of
 California, described in Exhibit "A" attached hereto and

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2
3 incorporated herein by this reference ("the Property") and by
4 the California Department of Toxic Substances Control, with
5 reference to the following facts:

6
7 A. This property contains hazardous substances;

8
9 B. Description of Facts

10
11 B.1. Contamination of the Property. Agricultural
12 chemical and pesticide products were formulated at
13 the facility which operated on the Property from
14 1946 to 1979. Contamination of soil and groundwater
15 occurred through the routine handling of materials
16 and cleaning of mixing equipment. The contaminants
17 detected in soil and/or groundwater during
18 investigation activities conducted between 1979 and
19 1987 that have been identified as chemicals of
20 concern include:

21
22 Dichlorodiphenylchloroethane (DDT), Dichlorodi-
23 phenyl-dichloroethylene (DDE), Dichlorodiphenyl
24 dichloroethane (DDD), Dieldrin, Aldrin, Heptachlor,
25 Chlordane, Endosulphan I, Endosulphan II, Toxaphene,
26 Alpha Beta Hexachlorocyclohexane (Alpha-BHC), Beta
27

Beta Hexachlorocyclohexane (Beta-BHC), Gamma Beta Hexachloro-cyclohexane (Lindane), Ethion, Carbo-phenothion, Ethyl Parathion, Dinitrobutylphenol (DNBP).

In 1982, approximately 20,000 tons of contaminated soil were excavated and were transported from the Property to a Class I soil hazardous waste disposal facility; however, some contaminated soil remained.

B.2. Potential Exposure Pathways and Health Risk. An evaluation of the potential human health risk associated with contamination found on and adjacent to the Property was performed prior to the implementation of the final remedial action. The findings of this evaluation were presented in the document, "Risk Assessment and Feasibility Study for the FMC Richmond Site", (Bechtel Environmental, Inc., November 1988). From this evaluation it was concluded that the only exposure pathway that would have a significant risk associated with it would be direct contact with contaminated soil. Inhalation of contaminated dust originating from the Property was identified as a possible exposure pathway;

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3 however, it was determined that the level of risk
4 associated with this pathway would be insignificant.
5

6 The final remedial action that has been implemented at
7 the Property, covering of contaminated soil with an
8 asphalt cap (asphalt cap), precludes the possibility of
9 direct human contact with contaminated soil and prevents
10 the liberation of fugitive dust. The purpose of this
11 remedial action was to eliminate any significant risks to
12 human health or the environment.
13

14 B.3. Surrounding Land Use and Population Potentially -
15 Affected. Land use in the vicinity of the Property
16 varies and includes light to heavy industrial,
17 residential, and agricultural use, much of the area in
18 the immediate vicinity of the Property is zoned heavy
19 industrial. The nearest residential area, Westgate
20 Circle, is located within 200 feet of the east boundary
21 of the property and consists of 60 units. Lake
22 Elementary School is located approximately 1000 feet
23 northeast of the Property.
24

25 C. Covenantor has made full and voluntary disclosure to
26 the Department of the presence of hazardous substances on
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3 the Property, and Covenantor has conducted extensive
4 investigation of the Property.
5

6 D. Covenantor desires and intends that in order to
7 protect the present or future public health and safety,
8 the Property shall be used in such a manner as to avoid
9 potential harm to persons or property which may result
10 from hazardous substances which have been deposited on
11 unspecified portions of the Property.
12

13 ARTICLE I
14

15 GENERAL PROVISIONS
16

17 1.01 Provisions to Run With the Land. This Covenant sets
18 forth protective provisions, covenants, restrictions and
19 conditions (collectively referred to as "Restrictions")
20 upon and subject to which the Property and every portion
21 thereof shall be improved, held, used, occupied, leased,
22 sold, hypothecated, encumbered and/or conveyed. Each and
23 all of the Restrictions shall run with the land, and pass
24 with each and every portion of the Property, and shall
25 apply to, inure to the benefit of and bind the respective
26 successors in interest thereof. Each and all of the
27 Restrictions are

1 imposed upon the entire Property unless expressly stated
2 as applicable to a specific portion of the Property.
3 Each and all of the restrictions are imposed pursuant to
4 Health and Safety Code Sections 25355.5 and 25356.1 and
5 run with the land pursuant to Health and Safety Code
6 Section 25355.5. Each and all of the Restrictions are
7 for the benefit of and enforceable by the Department of
8 Toxic Substances Control.
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11

12 1.02 Concurrence of Owners Presumed. All purchasers, lessees,
13 or possessors of any portion of the Property shall be
14 deemed by their purchase, leasing, or possession of such
15 Property, to be in accord with the foregoing and to agree
16 for and among themselves, their heirs, successors, and
17 assignees, and the agents, employees, and lessees of such
18 owners, heirs, successors, and assignees, that the
19 Restrictions as herein established must be adhered to for
20 the benefit of future Owners and Occupants and that their
21 interest in the Property shall be subject to the
22 Restrictions contained herein.
23

24 1.03 Incorporation into Deeds and Leases. Covenantor desires
25 and covenants that the Restrictions set out herein shall
26 be incorporated by reference in each and all deeds and
27 leases of any portion of the Property.

ARTICLE II

DEFINITIONS

2.01 Department. "Department" shall mean the California State Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

2.03 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.04 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs and assignees, who hold title to all or any portion of the Property.

ARTICLE III

DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Development and Use. Covenantor promises to restrict the use of the portion of the Property as described in Exhibit A as follows:

- a. Development of the Property shall be restricted to commercial or industrial use.
- b. No residence for human habitation shall be permitted on the Property.
- c. No hospitals shall be permitted on the Property.
- d. No schools for persons under 18 years of age shall be permitted on the Property.
- e. No day care centers for children shall be permitted on the Property.
- f. Any contaminated soil brought to the surface by excavation, that may occur on the Property, shall be managed as hazardous waste unless shown otherwise by sampling and analysis.

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3 g. Any proposed alteration of the asphalt cap shall
4 require written approval by the Department.
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6 h. The asphalt cap shall be inspected and maintained in
7 accordance with the maintenance plan approved by the
8 Department.
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10 i. The Covenantor agrees that the Department and or the
11 San Francisco Bay Regional Water Quality Control
12 Board (RWQCB) shall have access to the Property for
13 the purposes of inspection, surveillance, or
14 monitoring, as provided for in Chapters 6.5 and 6.8
15 of Division 20 of the Health and Safety Code and
16 Chapter 4 of Division 7 of the Water Code.
17
18 j. All uses and development of the property shall
19 preserve the integrity of the Cap and of the
20 groundwater monitoring system installed on the
21 Property pursuant to the requirements of the RWQCB.
22

23 3.02 Conveyance of Property. The Owner or Owners shall
24 provide a thirty (30) days advance notice to the
25 Department of any sale, lease or other conveyance of the
26 Property or an interest in the Property to a third
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3 person. The Department shall not, by reason of the
4 Covenant, have authority to approve, disapprove, or
5 otherwise affect any sale, lease, or other conveyance of
6 the Property except as otherwise provided by law,
7 administrative order or by reason of this Covenant.
8

9 3.03 Enforcement. Failure of the Owner to comply with any of
10 the restrictions set forth in paragraph 3.01 shall be
11 grounds for the Department, by reason of the Covenant, to
12 require that the Owner modify or remove any Improvements
13 constructed in violation of that paragraph. Violation of
14 the Covenant shall be grounds for the Department to file
15 civil and criminal actions against the Owner as provided
16 by law.
17

18 3.04 Notice in Agreements. All Owners and Occupants shall
19 execute a written instrument which shall accompany all
20 purchase, lease, sublease, or rental agreements relating
21 to the Property. The instrument shall contain the
22 following statement:
23

24 "The land described herein contains hazardous substances
25 and therefore is subject to a Covenant to Restrict Use of
26 Property which has been recorded. This statement is not
27 a declaration that a hazard exists."

ARTICLE IV

VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code Section 25233.

4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code Section 25234.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V

MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

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3 To: "Covenantor"
4 FMC Corporation
5 Agricultural Chemical Group
6 Attn: Western Environmental and Engineering
7 Manager
8 P.O. Box 2386
9 Fresno, CA 93745
10

11 Copy to: Department of Toxic Substances Control
12 700 Heinz Avenue, Suite 200
13 Berkeley, CA 94710
14

15 Copy to: California Regional Water Quality Control
16 Board, San Francisco Bay Region
17 2101 Webster Street, Suite 500
18 Oakland, CA 94612
19

20 5.03 Partial Invalidity. If any portion of the Restriction or
21 terms set forth herein is determined to be invalid for
22 any reason, the remaining portion shall remain in full
23 force and effect as if such portion had not been included
24 herein.
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3 5.04 Article Headings. Headings at the beginning of each
4 numbered article of this Covenant are solely for the
5 convenience of the parties and are not a part of the
6 Covenant.
7

8 5.05 Recordation. This instrument shall be executed by the
9 Covenantor and by the Regional Administrator, Region 2,
10 Toxic Substances Control Program, California Department
11 of Health Services. This instrument shall be recorded by
12 the Covenantor in the County of Contra Costa within ten
13 (10) days of the date of execution.
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5.06 References. All references to Code sections include
successor provisions.

IN WITNESS WHEREOF, the parties execute this Covenant as of
the date set forth above.

OWNER: FMC Corporation
By: Earl M. Morgan
Title: Vice President
Date: October 14, 1991

STATE OF CALIFORNIA
DEPARTMENT OF TOXIC SUBSTANCES
CONTROL
By: Howard K. Hatayama
Howard K. Hatayama
Title: Regional Administrator
Region 2
Date: 10/28/91

EXHIBIT A

Identification of the Property

The Property address is 855 Parr Boulevard, Richmond, California, and is defined by the Contra Costa Assessor's Office parcel numbers 408-07-03 and 408-07-08.

Legal Description of the Property

Parcel One:

Parcel B, as shown on Subdivision MS 767-81, recorded June 28, 1982, in Book 101 of Parcel Maps, Page 43, Contra Costa County Records.

Parcel Two:

A non-exclusive right-of-way for ingress and egress, roadway, railroad trackage and utility purposes over the easterly 40 feet of Parcel A as shown on Subdivision MS 767-81, recorded June 28, 1982, in Book 101 of Parcel Maps, Page 43, Contra Costa County Records.

BUWA JOURNAL

1 *Commonwealth of Pennsylvania* } ss.
 2 *County of Philadelphia*

3 ~~STATE OF CALIFORNIA~~)

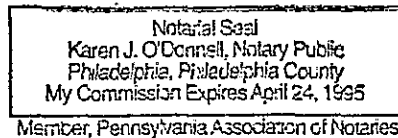
4 ~~COUNTY OF CONTRA COSTA~~)

5
 6 On (date) October 14, 1991 before me, the undersigned, a
 7 Notary Public in and for said state, personally appeared
 8 (Name) Earl M. Morgan personally known to me or proved to me
 9 on the basis of satisfactory evidence to be the person who
 10 executed the within instrument as Vice President (Title), of
 11 the corporation that executed the within instrument, and
 12 acknowledged to me that such corporation executed the same
 13 pursuant to its bylaws or a resolution of its board of
 14 directors.

15
 16 WITNESS my hand and official seal.

17
 18
 19 Karen J. O'Connell

20 Notary Public in and for said
 21 County and State



ACKNOWLEDGMENT

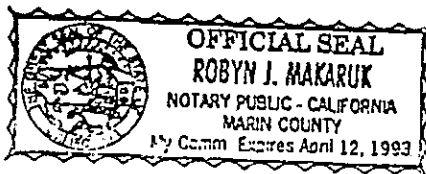
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STATE OF CALIFORNIA

COUNTY OF Marin

On this 28th day of October A.D., 1991 before me, Robyn J. Makaruk, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Howard Hatayama.

known to me to be the person whose name is subscribed to the within Instrument, and acknowledged to me that he executed same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.



Robyn J. Makaruk
Notary Public in and for said County and State of California